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9
10 Attorneys for Defendants
11 CITY OF PALOS VERDES ESTATES and
CHIEF OF POLICE JEFF KEPLEY

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA-**
14 **WESTERN DIVISION**

15 CORY SPENCER, an individual;
16 DIANA MILENA REED, an
individual; and COASTAL
17 PROTECTION RANGERS, INC., a
California non-profit public benefit
18 corporation,

19 Plaintiffs,

20 v.

21 LUNADA BAY BOYS; THE
INDIVIDUAL MEMBERS OF
22 THE LUNADA BAY BOYS,
including but not limited to SANG
23 LEE, BRANT BLAKEMAN,
ALAN JOHNSTON aka JALIAN
24 JOHNSTON, MICHAEL RAE
PAPAYANS, ANGELO
25 FERRARA, FRANK FERRARA,
CHARLIE FERRARA and N.F.;
26 CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE
27 JEFF KEPLEY, in his
representative capacity; and DOES
28 1-10,

Case No. 2:16-cv-02129-SJO-RAO

Assigned to
District Judge: Hon. S. James Otero
Courtroom: 1

Assigned Discovery:
Magistrate Judge: Hon. Rozella A. Oliver

[EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE
§ 6103]

**DEFENDANTS CITY OF PALOS
VERDES ESTATES AND CHIEF OF
POLICE JEFF KEPLEY'S ANSWER
TO PLAINTIFFS' COMPLAINT**

Complaint Filed: March 29, 2016

1 Defendants.

2
3
4 Defendants PALOS VERDES ESTATES and CHIEF OF POLICE JEFF
5 KEPLEY, (collectively, "Defendants"), by and through their attorneys of record,
6 hereby file this Answer and Affirmative Defenses to the Complaint of Plaintiffs
7 CORY SPENCER, DIANA MILENA REED, and COASTAL PROTECTION
8 RANGERS, INC. (collectively, "Plaintiffs"), and allege as follows:

9 **THE PARTIES**

10 1. Defendants lack knowledge or information sufficient to form a belief
11 as to the truth of the allegations concerning Plaintiff Cory Spencer's age,
12 occupation, and hobbies contained in Paragraph 1 of the Complaint, and on that
13 basis deny those allegations. Defendants deny the remainder of the allegations in
14 Paragraph 1 of the Complaint.

15 2. Defendants lack knowledge or information sufficient to form a belief
16 as to the truth of the allegations concerning Plaintiff Diana Milena Reed's age,
17 occupations, and hobbies contained in Paragraph 2 of the Complaint, and on that
18 basis deny those allegations. Defendants deny the remainder of the allegations in
19 Paragraph 2 of the Complaint.

20 3. Defendants admit that the City of Palos Verdes Estates owns the
21 "beach-park area" referenced in Paragraph 3 of the Complaint. Defendants lack
22 knowledge or information sufficient to form a belief as to the truth of the
23 allegations concerning Plaintiff Coastal Protection Rangers' dedicated purpose
24 contained in Paragraph 3 of the Complaint, and on that basis deny those allegations.
25 Except as so admitted, Defendants deny the remainder of the allegations in
26 Paragraph 3 of the Complaint.

27 4. Paragraph 4 of the Complaint contains, in part, legal conclusions to
28 which no response is required. To the extent a response is deemed required,

1 Defendant denies the same. Defendants admit that a group known by some as the
 2 “Lunada Bay Boys” exists. Except as so admitted in the foregoing sentence,
 3 Defendants deny the remainder of the allegations in Paragraph 4 of the Complaint.

4 5. Paragraph 5 of the Complaint contains, in part, legal conclusions to
 5 which no response is required. To the extent a response is deemed required,
 6 Defendant denies the same. Defendants admit that a group known by some as the
 7 “Lunada Bay Boys” allegedly uses a “Rock Fort” that is presently unpermitted.
 8 Except as so admitted in the foregoing sentence, Defendants lack knowledge or
 9 information sufficient to form a belief as to the truth of the allegations in Paragraph
 10 5 of the Complaint, and on that basis deny those remaining allegations.

11 6. Paragraph 6 of the Complaint contains legal conclusions to which no
 12 response is required. To the extent a response is deemed required, Defendants deny
 13 the allegations in Paragraph 6 of the Complaint.

14 7. Defendants lack knowledge or information sufficient to form a belief
 15 as to the truth of the allegations in Paragraph 7 of the Complaint, and on that basis
 16 deny those allegations.

17 8. Defendants admit that the City of Palos Verdes is a general law city
 18 subject to the laws of the State of California. Except as so admitted in the
 19 foregoing sentence, Defendants deny each and every allegation contained in
 20 Paragraph 8 of the Complaint.

21 9. Defendants admit that Jeff Kepley serves as the Chief of Police for the
 22 City of Palos Verdes Estates. Except as so admitted in the foregoing sentence,
 23 Defendants deny each and every allegation contained in Paragraph 9 of the
 24 Complaint.

25 10. Defendants lack knowledge or information sufficient to form a belief
 26 as to the truth of the allegations in Paragraph 10 of the Complaint, and on that basis
 27 deny those allegations.

28 **JURISDICTION AND VENUE**

1 11. Defendants admit that this Court has original jurisdiction under 42
2 U.S.C. § 1983 concerning Plaintiffs' claims against Defendants.

3 12. Since Plaintiffs' sole remaining claim against Defendants arises under
4 federal law, no response is required to this allegation.

5 13. Defendants admit that this Court is empowered to grant declaratory
6 and other relief under the statutes cited by Plaintiffs. Except as so admitted in the
7 foregoing sentence, Defendants deny each and every allegation contained in
8 Paragraph 13 of the Complaint.

9 14. Defendants admit the allegations in Paragraph 14 of the Complaint.

10 **STATEMENT OF FACTS**

11 15. Defendants admit that the City of Palos Verdes Estates was
12 incorporated in 1939; that approximately 13,500 residents live in the City of Palos
13 Verdes Estates; that median household income of said residents is approximately
14 \$170,000; that the City of Palos Verdes Estates is a unique, natural beauty; that the
15 City of Palos Verdes Estates employs approximately 40 police personnel; and that
16 the beaches, shoreline, and surfing areas in the City of Palos Verdes Estates are
17 open to the public. Except as so admitted in the foregoing sentence, Defendants
18 deny each and every allegation contained in Paragraph 15 of the Complaint.

19 16. Defendants admit that Plaintiffs reference written materials that
20 purportedly support their allegations. Defendants further admit that the beach and
21 surrounding areas are owned by the City of Palos Verdes Estates. Except as so
22 admitted the foregoing sentences, Defendants deny the remaining allegations in
23 Paragraph 16 of the Complaint.

24 17. Defendants admit that Lunada Bay is a location of big-wave break.
25 Defendants further admit that Plaintiffs reference written materials that purportedly
26 support their allegations. Except as so admitted in the foregoing sentence,
27 Defendants deny each and every allegation contained in Paragraph 17 of the
28 Complaint.

1 18. Defendants admit that a fort structure exists in Lunada Bay.
2 Defendants further admit that Plaintiffs reference purported police reports. Except
3 as so admitted in the foregoing sentences, Defendants lack knowledge or
4 information sufficient to form a belief as to the truth of the remaining allegations in
5 Paragraph 18 of the Complaint, and on that basis deny those allegations.

6 19. Defendants admit that Plaintiffs reference an internet hyperlink.
7 Except as so admitted in the foregoing sentence, Defendants lack knowledge or
8 information sufficient to form a belief as to the truth of the remaining allegations
9 contained in Paragraph 19 of the Complaint, and on that basis deny those
10 allegations.

11 20. Defendants admit that Plaintiffs reference an internet hyperlink.
12 Except as so admitted in the foregoing sentence, Defendants lack knowledge or
13 information sufficient to form a belief as to the truth of the remaining allegations
14 contained in Paragraph 20 of the Complaint, and on that basis deny those
15 allegations.

16 21. Defendants admit that Plaintiffs reference written materials. Except as
17 so admitted the foregoing sentence, Defendants deny the remaining allegations in
18 Paragraph 21 of the Complaint.

19 22. Defendants lack knowledge or information sufficient to form a belief
20 as to the truth of the allegations contained in Paragraph 22 of the Complaint, and on
21 that basis deny those allegations.

22 23. Defendants admit that Plaintiffs reference written materials. Except as
23 so admitted in the foregoing sentence, Defendants deny each and every allegation
24 contained in Paragraph 23 of the Complaint.

25 24. Defendants lack knowledge or information sufficient to form a belief
26 as to the truth of the allegations contained in Paragraph 24 of the Complaint, and on
27 that basis deny those allegations.

28 25. Defendants deny that a request for a police escort was ever refused.

1 Except as so denied in the foregoing sentence, Defendants lack knowledge or
2 information sufficient to form a belief as to the truth of the allegations contained in
3 Paragraph 25 of the Complaint, and on that basis deny those allegations.

4 26. Defendants admit that Plaintiff Reed complained to a police officer,
5 that a police officer went to the scene of Plaintiff Reed's Complaint, and that
6 Defendant Charlie Ferrara and other unidentified individuals were present at said
7 scene. Except as so admitted in the foregoing sentence, Defendants lack knowledge
8 or information sufficient to form a belief as to the truth of the allegations contained
9 in Paragraph 26 of the Complaint, and on that basis deny those allegations.

10 27. Defendants admit that an investigation occurred. Defendants further
11 admit that a man was identified as Defendant Brant Blakeman. Defendants further
12 admit that the City of Palos Verdes Estates offered to allow Plaintiff Reed to
13 identify Blakeman and Johnston. Defendants deny that police showed no interest
14 or ability in following up on Plaintiff Reed's complaint, and further deny any
15 failure to commit to a date to identify other individuals. Defendants further deny
16 the nature of the summarized statement attributed to Detective Venegas to the
17 extent Plaintiffs inaccurately and/or incompletely set forth such statement.
18 Defendants admit that Chief of Police Jeff Kepley and Captain Tony Best met with
19 Plaintiff Reed, and were friendly and respectful. Defendants deny that Chief
20 Kepley and Captain Best knew little about Plaintiff Reed's complaint and incident,
21 and deny that anyone ever refused to permit Plaintiff Reed to review photographs.
22 Defendants deny Plaintiffs' other attributions of statements to Defendants to the
23 extent that such statements are inaccurately and/or incompletely set forth.
24 Defendants deny that any of their conduct has caused Plaintiff Reed pain and
25 suffering, loss of sleep, emotional distress, or mental anguish. Except as so
26 expressly admitted or denied in the foregoing sentences, Defendants lack
27 knowledge or information sufficient to form a belief as to the truth of the remaining
28 allegations contained in Paragraph 27 of the Complaint, and on that basis deny

1 those allegations.

2 28. Defendants admit that the City of Palos Verdes Estates owns a jail
3 facility. Defendants deny that the City of Palos Verdes Estates employs more than
4 40 police personnel. Except as so admitted in the foregoing sentences, Defendants
5 deny the remaining allegations contained in Paragraph 28 of the Complaint.

6 29. Defendants lack knowledge or information sufficient to form a belief
7 as to the truth of the allegations contained in Paragraph 29 of the Complaint, and on
8 that basis deny those allegations.

9 **CLASS ACTION ALLEGATIONS**

10 30. Paragraph 30 contains legal conclusions to which no response is
11 required. To the extent a response is deemed required, Defendants deny the same.

12 31. Paragraph 31 contains legal conclusions to which no response is
13 required. To the extent a response is deemed required, Defendants deny the same.

14 32. Paragraph 32 contains legal conclusions to which no response is
15 required. To the extent a response is deemed required, Defendants deny the same.

16 33. Paragraph 33 contains legal conclusions to which no response is
17 required. To the extent a response is deemed required, Defendants deny the same.

18 a. Paragraph 33a contains legal questions and/or conclusions to
19 which no response is required. To the extent a response is deemed required,
20 Defendants deny the same.

21 b. Paragraph 33b contains legal questions and/or conclusions to
22 which no response is required. To the extent a response is deemed required,
23 Defendants deny the same.

24 c. Paragraph 33c contains legal questions and/or conclusions to
25 which no response is required. To the extent a response is deemed required,
26 Defendants deny the same.

27 d. Paragraph 33d contains legal questions and/or conclusions to
28 which no response is required. To the extent a response is deemed required,

1 Defendants deny the same.

2 e. Paragraph 33e contains legal questions and/or conclusions to
3 which no response is required. To the extent a response is deemed required,
4 Defendants deny the same.

5 f. Paragraph 33f contains legal questions and/or conclusions to
6 which no response is required. To the extent a response is deemed required,
7 Defendants deny the same.

8 g. Paragraph 33g contains legal questions and/or conclusions to
9 which no response is required. To the extent a response is deemed required,
10 Defendants deny the same.

11 h. Paragraph 33h contains legal questions and/or conclusions to
12 which no response is required. To the extent a response is deemed required,
13 Defendants deny the same.

14 i. Paragraph 33i contains legal questions and/or conclusions to
15 which no response is required. To the extent a response is deemed required,
16 Defendants deny the same.

17 j. Paragraph 33j contains legal questions and/or conclusions to
18 which no response is required. To the extent a response is deemed required,
19 Defendants deny the same.

20 k. Paragraph 33k contains legal questions and/or conclusions to
21 which no response is required. To the extent a response is deemed required,
22 Defendants deny the same.

23 l. Paragraph 33l contains legal questions and/or conclusions to
24 which no response is required. To the extent a response is deemed required,
25 Defendants deny the same.

26 m. Paragraph 33m contains legal questions and/or conclusions to
27 which no response is required. To the extent a response is deemed required,
28 Defendants deny the same.

1 n. Paragraph 33n contains legal questions and/or conclusions to
2 which no response is required. To the extent a response is deemed required,
3 Defendants deny the same.

4 o. Paragraph 33o contains legal questions and/or conclusions to
5 which no response is required. To the extent a response is deemed required,
6 Defendants deny the same.

7 p. Paragraph 33p contains legal questions and/or conclusions to
8 which no response is required. To the extent a response is deemed required,
9 Defendants deny the same.

10 34. Paragraph 34 contains legal questions and/or conclusions to which no
11 response is required. To the extent a response is deemed required, Defendants deny
12 the same.

13 35. Paragraph 35 contains legal questions and/or conclusions to which no
14 response is required. To the extent a response is deemed required, Defendants deny
15 the same.

16 36. Paragraph 36 contains legal questions and/or conclusions to which no
17 response is required. To the extent a response is deemed required, Defendants deny
18 the same.

19 37. Paragraph 37 contains legal questions and/or conclusions to which no
20 response is required. To the extent a response is deemed required, Defendants deny
21 the same.

22 38. Paragraph 38 contains legal questions and/or conclusions to which no
23 response is required. To the extent a response is deemed required, Defendants deny
24 the same.

25 39. Paragraph 39 contains legal questions and/or conclusions to which no
26 response is required. To the extent a response is deemed required, Defendants deny
27 the same.

28 40. Paragraph 40 contains legal questions and/or conclusions to which no

1 response is required. To the extent a response is deemed required, Defendants deny
2 the same.

3 41. Paragraph 41 contains legal questions and/or conclusions to which no
4 response is required. To the extent a response is deemed required, Defendants deny
5 the same.

6 42. Defendants lack knowledge or information sufficient to form a belief
7 as to the truth of the allegations contained in Paragraph 41 of the Complaint, and on
8 that basis deny those allegations.

9 **FIRST CAUSE OF ACTION**

10 **(Bane Act—Against LUNADA BAY BOYS and the Individual** 11 **Defendants)**

12 43. Defendants restate and incorporate by reference the responses to
13 Paragraphs 1 through 42 of the Complaint as though fully set forth herein.

14 44. Plaintiffs' First Cause of Action is not asserted against Defendants. To
15 the extent a response is deemed required, Defendants deny the same.

16 45. Plaintiffs' First Cause of Action is not asserted against Defendants. To
17 the extent a response is deemed required, Defendants deny the same.

18 46. Plaintiffs' First Cause of Action is not asserted against Defendants. To
19 the extent a response is deemed required, Defendants deny the same.

20 47. Plaintiffs' First Cause of Action is not asserted against Defendants. To
21 the extent a response is deemed required, Defendants deny the same.

22 48. Plaintiffs' First Cause of Action is not asserted against Defendants. To
23 the extent a response is deemed required, Defendants deny the same.

24 49. Plaintiffs' First Cause of Action is not asserted against Defendants. To
25 the extent a response is deemed required, Defendants deny the same.

26 50. Plaintiffs' First Cause of Action is not asserted against Defendants. To
27 the extent a response is deemed required, Defendants deny the same.
28

CIVIL CONSPIRACY ALLEGATIONS

51. Plaintiffs' First Cause of Action is not asserted against Defendants. To the extent a response is deemed required, Defendants deny the same.

52. Plaintiffs' First Cause of Action is not asserted against Defendants. To the extent a response is deemed required, Defendants deny the same.

53. Plaintiffs' First Cause of Action is not asserted against Defendants. To the extent a response is deemed required, Defendants deny the same.

SECOND CAUSE OF ACTION

(Public Nuisance—LUNADA BAY BOYS and the Individual Defendants)

54. Defendants restate and incorporate by reference the responses to Paragraphs 1 through 53 of the Complaint as though fully set forth herein.

55. Plaintiffs' Second Cause of Action is not asserted against Defendants. To the extent a response is deemed required, Defendants deny the same.

56. Plaintiffs' Second Cause of Action is not asserted against Defendants. To the extent a response is deemed required, Defendants deny the same.

57. Plaintiffs' Second Cause of Action is not asserted against Defendants. To the extent a response is deemed required, Defendants deny the same.

58. Plaintiffs' Second Cause of Action is not asserted against Defendants. To the extent a response is deemed required, Defendants deny the same.

59. Plaintiffs' Second Cause of Action is not asserted against Defendants. To the extent a response is deemed required, Defendants deny the same.

60. Plaintiffs' Second Cause of Action is not asserted against Defendants. To the extent a response is deemed required, Defendants deny the same.

THIRD CAUSE OF ACTION

(42 U.S.C. § 1983—Equal Protection—PALOS VERDES ESTATES and Defendant Chief of Police Kepley)

61. Defendants restate and incorporate by reference the responses to

1 Paragraphs 1 through 60 of the Complaint as though fully set forth herein.

2 62. Defendants deny the allegations contained in Paragraph 62 of the
3 Complaint.

4 63. Defendants deny the allegations contained in Paragraph 63 of the
5 Complaint.

6 64. Defendants deny the allegations contained in Paragraph 64 of the
7 Complaint.

8 65. Defendants deny the allegations contained in Paragraph 65 of the
9 Complaint.

10 **FOURTH CAUSE OF ACTION**

11 **(42 U.S.C. § 1983—Privileges and Immunities—PALOS VERDES**

12 **ESTATES and Defendant Chief of Police Kepley)**

13 66. Defendants restate and incorporate by reference the responses to
14 Paragraphs 1 through 66 of the Complaint as though fully set forth herein.

15 67. Plaintiffs' Fourth Cause of Action is no longer at issue, since the Court
16 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
17 without leave to amend. To the extent a response is deemed required, Defendants
18 deny the same.

19 68. Plaintiffs' Fourth Cause of Action is no longer at issue, since the Court
20 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
21 without leave to amend. To the extent a response is deemed required, Defendants
22 deny the same.

23 69. Plaintiffs' Fourth Cause of Action is no longer at issue, since the Court
24 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
25 without leave to amend. To the extent a response is deemed required, Defendants
26 deny the same.

FIFTH CAUSE OF ACTION

(Violation of California Coastal Act—All Defendants)

70. Defendants restate and incorporate by reference the responses to Paragraphs 1 through 69 of the Complaint as though fully set forth herein.

71. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action without leave to amend. To the extent a response is deemed required, Defendants deny the same.

72. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action without leave to amend. To the extent a response is deemed required, Defendants deny the same.

73. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action without leave to amend. To the extent a response is deemed required, Defendants deny the same.

74. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action without leave to amend. To the extent a response is deemed required, Defendants deny the same.

75. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action without leave to amend. To the extent a response is deemed required, Defendants deny the same.

76. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action without leave to amend. To the extent a response is deemed required, Defendants deny the same.

1 77. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
2 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
3 without leave to amend. To the extent a response is deemed required, Defendants
4 deny the same.

5 78. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
6 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
7 without leave to amend. To the extent a response is deemed required, Defendants
8 deny the same.

9 79. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
10 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
11 without leave to amend. To the extent a response is deemed required, Defendants
12 deny the same.

13 80. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
14 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
15 without leave to amend. To the extent a response is deemed required, Defendants
16 deny the same.

17 81. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
18 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
19 without leave to amend. To the extent a response is deemed required, Defendants
20 deny the same.

21 82. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
22 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
23 without leave to amend. To the extent a response is deemed required, Defendants
24 deny the same.

25 83. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
26 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
27 without leave to amend. To the extent a response is deemed required, Defendants
28 deny the same.

1 84. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
2 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
3 without leave to amend. To the extent a response is deemed required, Defendants
4 deny the same.

5 85. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
6 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
7 without leave to amend. To the extent a response is deemed required, Defendants
8 deny the same.

9 86. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
10 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
11 without leave to amend. To the extent a response is deemed required, Defendants
12 deny the same.

13 87. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
14 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
15 without leave to amend. To the extent a response is deemed required, Defendants
16 deny the same.

17 88. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
18 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
19 without leave to amend. To the extent a response is deemed required, Defendants
20 deny the same.

21 89. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
22 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
23 without leave to amend. To the extent a response is deemed required, Defendants
24 deny the same.

25 90. Plaintiffs' Fifth Cause of Action is no longer at issue, since the Court
26 granted Defendants' Motion to Dismiss as to Plaintiff's Fourth Cause of Action
27 without leave to amend. To the extent a response is deemed required, Defendants
28 deny the same.

1 **SEVENTH CAUSE OF ACTION**

2 **(Battery—LUNADA BAY BOYS and the Individual Defendants)**

3 99. Defendants restate and incorporate by reference the responses to
4 Paragraphs 1 through 98 of the Complaint as though fully set forth herein.

5 100. Plaintiffs' Seventh Cause of Action is not asserted against Defendants.
6 To the extent a response is deemed required, Defendants deny the same.

7 101. Plaintiffs' Seventh Cause of Action is not asserted against Defendants.
8 To the extent a response is deemed required, Defendants deny the same.

9 **EIGHTH CAUSE OF ACTION**

10 **(Negligence—LUNADA BAY BOYS and the Individual**
11 **Defendants)**

12 102. Defendants restate and incorporate by reference the responses to
13 Paragraphs 1 through 101 of the Complaint as though fully set forth herein.

14 103. Plaintiffs' Eighth Cause of Action is not asserted against Defendants.
15 To the extent a response is deemed required, Defendants deny the same.

16 104. Plaintiffs' Eighth Cause of Action is not asserted against Defendants.
17 To the extent a response is deemed required, Defendants deny the same.

18 105. Plaintiffs' Eighth Cause of Action is not asserted against Defendants.
19 To the extent a response is deemed required, Defendants deny the same.

20 106. Plaintiffs' Eighth Cause of Action is not asserted against Defendants.
21 To the extent a response is deemed required, Defendants deny the same.

22 **AFFIRMATIVE DEFENSES**

23 Pursuant to Rule 8 of the Federal Rules of Civil Procedure, for their
24 affirmative defenses to the claims asserted herein, Defendants state and allege as
25 follows:

26 **FIRST AFFIRMATIVE DEFENSE**

27 1. The Complaint does not state facts sufficient to constitute a cause of
28 action against Defendants.

1 SECOND AFFIRMATIVE DEFENSE

2 2. Plaintiffs' federal civil rights claim is barred because the Complaint
3 fails to allege facts that go beyond mere tortious conduct, and thus, fails to meet the
4 threshold requirements of a civil rights violation.

5 THIRD AFFIRMATIVE DEFENSE

6 3. Plaintiffs' claims are barred, in whole or in part, for failure to join
7 necessary parties.

8 FOURTH AFFIRMATIVE DEFENSE

9 4. Plaintiffs' claims are barred, in whole or in part, by the equitable
10 doctrine of estoppel.

11 FIFTH AFFIRMATIVE DEFENSE

12 5. Plaintiffs' claims are barred, in whole or in part, by the doctrine of
13 laches.

14 SIXTH AFFIRMATIVE DEFENSE

15 6. Plaintiffs' claims are barred, in whole or in part, by the doctrine of
16 equitable waiver.

17 SEVENTH AFFIRMATIVE DEFENSE

18 7. Plaintiffs' claims are barred, in whole or in part, by the applicable
19 statute of limitations.

20 EIGHTH AFFIRMATIVE DEFENSE

21 8. Plaintiffs' damages, if any, are the result of actions of individuals or
22 entities other than Defendants for whose conduct Defendants are not responsible.

23 NINTH AFFIRMATIVE DEFENSE

24 9. Plaintiffs' claims are barred, in whole or in part, by the doctrine of
25 unclean hands.

26 TENTH AFFIRMATIVE DEFENSE

27 10. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs
28 failed to mitigate their damages, if any.

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiffs lack standing to bring this action.

TWELFTH AFFIRMATIVE DEFENSE

12. Defendant Chief of Police Jeff Kepley is immune from Plaintiffs' 42 U.S.C. § 1983 claim because, as an agent of the City of Palos Verdes Estates, he is not subject to such a claim in his official or personal capacity.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Plaintiff lacks standing to bring this action.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Defendants acted in good faith and did not directly or indirectly perform any act or omission whatsoever which would constitute a violation of any state or federal rights possessed by Plaintiffs.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Plaintiffs' federal civil rights claim is barred due to the existence of adequate state remedies.

SIXTEENTH AFFIRMATIVE DEFENSE

16. The Plaintiff's federal civil rights claim is barred due to the existence of adequate state remedies.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. At all times relevant to this litigation, the acts or omissions of Defendants—if any—occurred while exercising due care in the execution or enforcement of a law thereby precluding Plaintiffs from any recovery from Defendants. California Government Code § 820.4.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. Defendants are immune from liability in that the injuries and damages, if any, sustained by Plaintiffs at the times and places alleged in the Complaint were a direct and proximate result of the acts, omissions or negligence of third parties not within the knowledge or control of the Defendants, and were sustained, if at all,

1 without any wrongful act or omission on the part of the Defendants. California
2 Government Code § 820.8.

3 NINETEENTH AFFIRMATIVE DEFENSE

4 19. Defendants are immune from liability in that the injuries and damages,
5 if any, sustained by Plaintiff at the times and places alleged in the Complaint were a
6 direct and proximate result of the acts, omissions or negligence of third parties not
7 within the knowledge or control of the Defendants, and were sustained, if at all,
8 without any negligence or wrongful act or omission on the part of the Defendants.
9 California Government Code § 820.8.

10 TWENTIETH AFFIRMATIVE DEFENSE

11 20. At all times relevant to this litigation, Defendants or an employee of
12 Defendants were exercising the discretion vested in Defendants or their employees,
13 and Plaintiffs are precluded from recovering from Defendants, whether or not such
14 discretion was abused. California Government Code § 820.2.

15 TWENTY-FIRST AFFIRMATIVE DEFENSE

16 21. At all times relevant to this litigation, Defendants acted in good faith,
17 without malice, and under the apparent authority of an enactment thereby
18 precluding Plaintiffs from recovering from Defendants. California Government
19 Code § 820.6.

20 TWENTY-SECOND AFFIRMATIVE DEFENSE

21 22. Defendants are entitled to a qualified immunity for any state or federal
22 civil rights claim.

23 TWENTY-THIRD AFFIRMATIVE DEFENSE

24 23. Plaintiffs' federal civil rights claim is barred because there is no
25 imputed liability for public employees.

26 TWENTY-FOURTH AFFIRMATIVE DEFENSE

27 24. Defendants are immune from liability under Plaintiffs' federal civil
28 rights claim because their conduct did not violate clearly established rights.

1 TWENTY-FIFTH AFFIRMATIVE DEFENSE

2 25. Plaintiffs' federal civil rights claim is barred because Defendants were
3 not deliberately indifferent to Plaintiffs' constitutional rights.

4 TWENTY-SIXTH AFFIRMATIVE DEFENSE

5 26. At no time relevant to this litigation did Plaintiffs sustain any violation
6 of their civil rights pursuant to a governmental habit or custom, which precludes
7 Plaintiffs from maintaining their cause of action for violation of civil rights.
8 (*Monell v. Dept. of Social Services* (1978) 436 U.S. 658.)

9 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

10 27. At all times relevant to this litigation, Defendants were performing
11 discretionary functions and Defendants' conduct did not violate any established
12 statutory or constitutional rights or which a reasonable person would have known,
13 and Plaintiffs are thereby precluded from maintaining their causes of action for
14 violation of her civil rights. (*Harlow v. Fitzgerald* (1981) 457 U.S. 800.)

15 TWENTY-EIGHT AFFIRMATIVE DEFENSE

16 28. At all times relevant to this litigation, Defendants acted in good faith
17 and with probable cause, and at no time did Defendants know or should Defendants
18 have known that the actions taken within the sphere of Defendants' official
19 responsibilities would violate the constitutional rights of Plaintiffs—Plaintiffs are
20 thereby precluded from maintaining her causes of action for violation of her civil
21 rights. (*Harlow v. Fitzgerald* (1981) 457 U.S. 800.)

22 TWENTY-NINTH AFFIRMATIVE DEFENSE

23 29. To the extent the Complaint is based on a theory of respondent
24 superior against Defendants, Defendants are immune from liability. (*Monell v.*
25 *Dept. of Social Services* (1978) 436 U.S. 658.)

26 THIRTIETH AFFIRMATIVE DEFENSE

27 30. Defendants assert that discovery may reveal the existence of other
28 affirmative defenses pursuant to Rule 8 of the Federal Rules of Civil Procedure, and

1 Defendants reserve the right to amend this Answer to allege any and all of said
2 affirmative defenses as may be applicable.

3 **DEMAND FOR A JURY TRIAL**

4 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendants
5 demand that this matter be tried by and before a jury to the extent provided by law.

6 **PRAYER**

7 WHEREFORE, Defendants pray for judgment herein as follows:

- 8 1. That Plaintiffs take nothing by way of the Complaint;
9 2. That Defendants be dismissed, and that Defendants recover their
10 attorneys' fees incurred herein;
11 3. That Defendants be dismissed, and that Defendants recover their costs
12 of suit incurred herein; and
13 4. Such other and further relief as the Court deems just and proper.

14
15 Dated: July 25, 2016

KUTAK ROCK LLP

16
17 By: /s/ Edwin J. Richards

18 Edwin J. Richards
19 Antoinette P. Hewitt
20 Christopher D. Glos
21 Rebecca L. Wilson
22 Attorneys for Defendants
23 CITY OF PALOS VERDES ESTATES
24 and CHIEF OF POLICE JEFF KEPLEY
25
26
27
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